

**MINUTES OF THE
CHILD WELFARE LEGISLATIVE OVERSIGHT PANEL**
Thursday, June 17, 2004 - 2:00 p.m. – Room W25 House Building

Members Present:

Sen. Dan R. Eastman, Senate Chair
Rep. David Litvak
Rep. Steven R. Mascaró

Staff Present:

Mr. Mark D. Andrews, Research Analyst
Mr. Thomas R. Vaughn, Associate General Counsel
Ms. Wendy L. Bangerter, Legislative Secretary

Members Absent:

Sen. Gene Davis
Rep. Mike Thompson, House Chair

Note: A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or by contacting the committee secretary, Wendy Bangerter, at 538-1032.

1. Committee Business

Chair Eastman called the meeting to order at 2:05 p.m. He introduced Mr. Thomas Vaughn, Associate General Counsel for the Panel.

MOTION: Rep. Mascaró moved to approve the minutes. The motion passed unanimously.

At the request of Rep. Mascaró, the Panel agreed to make the following comments a part of the Panel's official record and forward them to Legislative Leadership:

"We have had circumstances where some members of this committee have had difficulty getting here and caused that we have not had a quorum in order to conduct business. There are some members for which this has been a recurring problem. I would like to make two recommendations to send to Leadership for their consideration: 1) interview those members of the committee that are having a difficult time in attending or staying through a complete meeting, because it seems there are some members that come and leave early, to see if this is a meeting that is difficult for them to be a member of and if so, find a replacement for those members; and 2) consider expanding the size of this committee so that we have a better opportunity of having a quorum to conduct business. These two recommendations should be considered by Leadership in fairness to those people that come to testify, who take time out of work to be here to try and take care of the state's business with regards to this oversight committee's responsibility."

2. Federal Court Oversight

Mr. Alain Balmanno, Litigation Division, Office of the Attorney General, reported on federal court oversight developments. He reported on Judge Campbell's willingness to entertain a motion in early 2006 to terminate oversight. The next status conference is December 8. Prior to that time, the state is planning to do a study of case process review scores. If the state has not reached a stipulated agreement with the National Center for Youth Law by November, the state will file a motion indicating how it would like the Performance Milestone Plan modified. The state has spent over \$5 million for attorneys fees and court monitor costs since The *David C. v. Leavitt* settlement agreement was entered into in 1994.

3. Access to Juvenile Court Hearings

Ms. Robin Arnold-Williams, Director, Department of Human Services, reported on an evaluation of the pilot program in the Third and Sixth Court Districts to allow public access to child welfare proceedings in juvenile court. She indicated that she felt that because the hearings were open, the cases were handled more responsibly.

Ms. Aude Bermond-Hamlet and Mr. Craig Monson, Director, Office of Services Review, Department of Human Services, distributed and reviewed "Open Child Protection Hearings Pilot Project Impact on Children Study." They reported that out of 417 hearings reviewed, only five included attendees that would not have been present prior to implementation of the pilot program. They indicated that:

- the public has not flooded courtrooms;
- almost no one involved in the hearings knew that they were open;
- parents generally did not like the idea that the community could attend a hearing;
- the media handled cases responsibly and did not allow names to be published; and
- there has been no negative impact on children.

Ms. Kristin Brewer, Director, Office of the Guardian ad Litem, stated she opposed the opening of child welfare hearings to the public, although she can see the benefit of the public knowing the plight of abused children. She reported on public access in the context of a case in which she was recently involved.

During the case, Ms. Brewer argued that access is the policy of the state and prevents child abuse from being kept secret. She said the media's coverage of the case was responsible. However, the case was confusing to the media because they didn't have the petition and the parties stipulated to documents not available to the media. The issue of whether the petition to the court should be available to the media is under consideration.

Ms. Brewer indicated she would move to close a hearing if psychological records were involved.

4. H.B. 140

Mr. Andrews reviewed the letter from Governor Walker, previously distributed to the panel, that listed five reasons for her veto of H.B. 140, "Child and Family Services and Related Judicial Code Amendments."

Mr. Mark May, Chief, Child Protection Division, Office of the Attorney General, explained the concerns that the Attorney General's office had with H.B. 140:

- H.B. 140 could have negatively impacted the state's progress in the *David C.* case;
- the mature minor concept may have been extended beyond medical neglect to other circumstances for which the Legislature did not intend it to apply;
- the bill would have shifted the focus of judicial proceedings from whether a child was medically neglected to whether the child was a mature minor;

- at least one of the versions of the bill would have affected CAPTA (Child Abuse Prevention and Treatment Act) funding;
- the bill would have created a shift in presumptions by importing criminal burden of proof standards to child welfare proceedings; and
- the bill would have eliminated the presumption of caretaker responsibility.

Mr. May indicated that there is a workgroup looking at issues related to the mature minor concept.

Ms. Brewer expressed the following concerns about H.B. 140:

- the bill raises concerns about the timing of the appointment of a guardian ad litem;
- the bill addresses guardian ad litem ethics, which are normally the province of the court; and
- the bill creates a loyalty concern by allowing a parent to influence the appointment of a guardian ad litem.

Ms. Brewer indicated that if the child's counsel is "too zealous," the appropriate response is to strengthen the parents' counsel rather than tear down the office created for children.

Mr. Ray Wahl, Juvenile Courts, said that the concerns of the courts with H.B. 140 were covered by previous witnesses.

Ms. Arnold-Williams said that the committee created by the Child and Family Law Subcommittee of the Judicial Council to look at issues related to the mature minor concept is taking a broad look at the concept. This will include looking at whether to expand emancipation and decision-making options for 16 and 17 year-olds who have been abandoned, and considering more fully the ramifications of the mature minor concept found in H.B. 140.

Rep. Mascaro said that he hopes that bills relating to child welfare will be seen and discussed by the Panel to help fine-tune them before they are introduced in a general session.

Ms. Martha Rojas spoke in favor of open access to child welfare proceedings so that officials may be monitored by the media and the public. She shared details of her experience with the child welfare system and said that some guardians ad litem and assistant attorneys general are out of control. She said guardians ad litem and parents' defense counsel don't have enough time to deal with cases. She also expressed concern that actors in the child welfare system rely on comments made by caseworkers in the SAFE management information system that go beyond the professional training of the caseworker. Sen. Eastman said that the Panel will follow up on this matter.

5. Adjourn

MOTION: Rep. Mascaro moved to adjourn the meeting. The motion passed unanimously.

Chair Eastman adjourned the meeting at 3:50 p.m.